IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.176 OF 2004

1. Pandurang Krishna Bharade
(since deceased through heirs)
1(a) Sonabai Pandurang Bharade & ors... Appellants

Versus

Rajaram Bharade & Ors. .. Respondents

Mr.S.S.Redekar, for appellants
None for respondents

CORAM : P.V.KAKADE, J.
DATE : 6TH JUNE, 2005.

P.C.:

1. This is an appeal preferred by the appellants against the judgment and order dated 20th October, 2003 passed by the 4th Additional District Judge, Kolhapur dismissing the appeal and confirming the judgment and

order dated 31st January 1995 passed by Civil Judge, Junior Division, Gargoti dismissing the suit for partition based on the document of so-called agreement amongst the parties and seeking to get partition of movable as well as immovable properties of the family including a goods truck, one 10 horsepower motor with pipe line, one floor mill and several houses belonging to the family.

2. The suit was filed for declaration as well as permanent injunction based on the allegation that the impugned property was joint family property and both the plaintiffs and both the defendants each had 1/4th share therein.

3. The learned trial judge adjudicated the suit on merits and came to the conclusion that the plaintiffs had failed to prove the property in question was joint family property and they had share therein. It was also held that the suit agreement was not admissible in evidence and therefore suit based upon such document was not tenable in law and as such suit came to be dismissed. The appeal was preferred against the said judgment to the district court. The lower appellate

court also endorsed to the views of the trial court and dismissed the appeal and hence the present appeal.

4. Initially it must be noted that there is absolutely no substantial question of law involved. The only basis sought to be made for this appeal is the provision of Section 66 r/w 65 of the Evidence Act, which stipulates the procedure to lead the secondary evidence relating to documents. Both the courts below have held that as the procedure is mandatory and has not been followed by the appellants while introducing the document of agreement dated 10.2.1984, the suit based upon it cannot be decreed as the document in question cannot be read in evidence at all.

. It is evident from the record that the document is nothing but an un-certified xerox copy of the so-called agreement on a Stamp Paper executed amongst the parties and signed by some of the parties to the suit. It was submitted on behalf of the appellants that the plaintiffs led evidence in support of this document by way of examining attesting witness as well as scribe. However, it is apparent that no notice was issued to the other side before production of this document nor it is

established in proper manner that the original document has been destroyed or is not available despite the best efforts. Moreover it is also to be noted that all the parties to the suit are not the signatories to the agreement and therefore, on that count also decree could not have been passed on the basis of this document.

5. Be as it may, the fact remains that no substantial question of law is involved in this appeal and as such the appal deserves to be dismissed and stands dismissed.

. Consequently the civil application no.164 of 2004 also stands dismissed.

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